

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2196 of 2019 (O&M)

Date of decision: 21.05.2019

Laxmikant Bhardwaj and another ...Petitioners

versus

Jai Prakash Bhardwaj ...Respondent

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Anoop Kumar Yadav, Advocate for the petitioners.

B.S. Walia, J.,

1. Challenge in the revision petition under Article 227 of the Constitution of India is to order Annexure P/4 dated 18.02.2019, passed by the learned Addl. Civil Judge (Senior Division), Narnaul, dismissing application under Order 6 Rule 17, Code of Civil Procedure, moved on behalf of the petitioners/defendants for amendment of the written statement.

2. Brief facts of the case leading to the filing of the revision petition are that the respondent/plaintiff filed a civil suit for possession against the petitioners/defendants qua the suit property on the averments that in the month of October, 2011, the petitioners had taken the suit property i.e. a shop and a room on license. However, despite the request of the respondent/ plaintiff, the petitioners/defendants had failed to vacate the suit property. An application was moved by the petitioners/defendants under Order 6 Rule 17 CPC for amendment of the written statement to the effect that the respondent/plaintiff had become owner of the suit property after settlement was made by the father of the parties, for adding the name of the tenant as also to give a recital about the tradition and custom of giving a shop on rent in the same area and further

that the father of the respondent/plaintiff had also given the shop on rent while in paragraph No.5, petitioners/defendants wanted to add that neither the respondent/plaintiff nor any of his family member had given the demised shop on license. The application for amendment was vehemently opposed by the respondent/plaintiff. On consideration of the application and the stand of the parties, the learned trial Court dismissed the application vide order dated 18.02.2019.

3. Learned counsel contended that the trial Court erred in dismissing the application without taking into account that the petitioners/defendants counsel had not drafted the written statement properly, that amendment of pleadings could be allowed at any stage for determining the real controversy between the parties, that the amendment was necessary as complete facts could not be brought to the notice of the learned trial Court inadvertently and when the same came to the notice of the petitioners/ defendants, they immediately filed the application for amendment of the written statement, that the case was at the initial stage and the respondent/plaintiff had not led any evidence till date etc.

4. I have considered the submission's of learned counsel.

5. Admittedly, the civil suit was filed on 27.08.2014. Issues were framed on 30.08.2016, where after six witnesses of the respondent/plaintiff were examined. No doubt pleadings can be amended at any stage but as per the proviso to Order 6 Rule 17 CPC, after the commencement of the trial, pleadings can be allowed to be amended only on showing that the matter could not be raised before the commencement of the trial despite exercise of due diligence. Reference in this regard can be made to the decision of Hon'ble the Supreme Court in **Revajeetu Builders and Developers vs. Narayanswamy &**

Sons 2009 (1) SCC 84. The petitioners/defendants sought to amend the written statement so as to incorporate a recital regarding settlement made by the father of the parties during his life time as also regarding the trend in the particular area about giving properties on rent and not on license. However, the amendments prayed for are not ones which came to the notice of the petitioners/defendants after the filing of the written statement as all facts pertain to the pre suit period and were to the knowledge of the petitioners/defendants at the time of filing of the written statement. Besides, the stand of the petitioners is contradictory in as much as while in paragraph No. 5(i) of the revision petition, it is the stand of the petitioners that they had disclosed all facts to their counsel but the counsel did not properly draft the written statement whereas in paragraph No. 5(iv) of the petition it has been mentioned that the amendment prayed for could not be raised earlier inadvertently and on realizing the same, application for amendment was moved immediately. In, the circumstances, the learned trial Court rightly observed that it could not be said that the petitioners/ defendants were not aware of the facts qua which amendment was sought or that the amendment prayed for was not such which could not be brought up before the commencement of the trial despite the exercise of due diligence. Besides the trial commenced on framing of the issues on 30.08.2016 and six witnesses of the respondent/plaintiff have already been examined. No case is made out to show that despite exercise of due diligence, the petitioners/defendants could not raise the matter before the commencement of trial and in the circumstances of the prayer not being hit by want of due diligence. Reference in this context can be made to the decision of Hon'ble the Supreme Court in the decision of **Ajendraprasadji N. Pande &**

Anr. Swami Keshavprakeshdasji N. & Ors. 2006 (12) SCC 1. Relevant extract of the same is reproduced as under:-

“52. We have carefully perused the pleadings and grounds which are raised in the amendment application preferred by the appellants at Ex. 95. No facts are pleaded nor any grounds are raised in the amendment application to even remotely contend that despite exercise of due diligence these matters could not be raised by the appellants. Under these circumstances, the case is covered by proviso to Rule 17 Order 6 and, therefore, the relief deserves to be denied. The grant of amendment at this belated stage when deposition and evidence of three witnesses is already over as well as the documentary evidence is already tendered, coupled with the fact that the appellants' application at Exh. 64 praying for recasting of the issues having been denied and the said order never having been challenged by the appellants, the grant of the present amendment as sought for at this stage of the proceedings would cause serious prejudice to the contesting respondents - original plaintiffs and hence it is in the interest of justice that the amendment sought for be denied and the petition be dismissed.

54. It is submitted that the date of settlement of issues is the date of commencement of trial. [Kailash v. Nankhu & Ors. (supra)] Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination in chief as date of commencement of trial, the matter will fall under proviso to Order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he

could not have raised the matter before the commencement of trial. We have already referred to the dates and events very elaborately mentioned in the counter affidavit which proves lack of due diligence on the part of the defendant Nos. 1 and 2 (appellants).”

7. In the light of the position noted above, no case is made out warranting interference with the well reasoned orders passed by the learned trial court. Accordingly, finding no merit in the revision petition, the same is dismissed in *limine*.

21.05.2019

rajesh.k.khurana

(B.S. Walia)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No